

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY APRIL 1, 2014

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1859

Introduced by Assembly Member Maienschein

February 19, 2014

An act to add Article 7 (commencing with Section 6600) to Chapter 6 of Division 3 of the Business and Professions Code, *to amend Section 13401 of the Corporations Code*, and to add Sections 2104.5, 8406, and 15605 to the Probate Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

AB 1859, as amended, Maienschein. Professional fiduciaries: professional corporations.

Existing law, the Professional Fiduciaries Act, establishes the Professional Fiduciaries Bureau within the Department of Consumer Affairs and requires the bureau to license and regulate professional fiduciaries, as specified.

The Moscone-Knox Professional Corporation Act provides for the organization of a corporation under specified provisions of law for the purposes of qualifying as a professional corporation under that act and rendering professional services. The act defines professional services as services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.

This bill would provide for the formation of licensed professional fiduciary corporations pursuant to the act described above, as specified.

The bill would provide that it is unprofessional conduct and a violation of the Professional Fiduciaries Act to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate these provisions, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws. The bill would require the name of a licensed professional fiduciary corporation and any name or names under which it may render professional services to contain the words “~~professional fiduciary~~” “*licensed professional fiduciary*” and wording or abbreviations denoting corporate existence. The bill would require each director, shareholder, and officer of a licensed professional fiduciary corporation to be a licensed professional fiduciary. The bill would prohibit the income of a licensed professional fiduciary corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined, from accruing, in any manner, to the benefit of the shareholder or his or her shares in the licensed professional fiduciary corporation. ~~The bill would authorize the bureau to adopt and enforce regulations to carry out these provisions.~~ *The bill would require the bylaws of a licensed professional fiduciary corporation to include a provision that requires the capital stock of the corporation owned by a disqualified person, as defined, or a deceased person, to be sold to the corporation or to the remaining shareholders of the corporation within 60 days. The bill would require a licensed professional fiduciary corporation to maintain insurance coverage of at least \$1,000,000 for claims against the corporation, as specified. The bill would require a licensed fiduciary corporation that is appointed as a guardian, conservator, personal representative, or trustee by a court to be liable for any licensed professional fiduciary who violates the powers and duties of those appointments while acting on behalf of the corporation.*

Existing law governing the administration of estates and trusts authorizes the appointment of a person as a personal representative of a decedent’s estate, a guardian or conservator of a person or an estate, or a trustee. Existing law defines “person” to include a corporation for these purposes.

This bill would provide that if a *licensed* professional fiduciary corporation is appointed as a guardian, conservator, trustee, or personal representative, each shareholder, officer, director, or employee of the corporation who is a *licensed* professional fiduciary may individually exercise the powers and duties of that appointment.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7 (commencing with Section 6600) is
2 added to Chapter 6 of Division 3 of the Business and Professions
3 Code, to read:

4
5 Article 7. Licensed Professional Fiduciary Corporations
6

7 6600. ~~(a)~~—A licensed professional fiduciary corporation is a
8 corporation that is authorized to render professional services, as
9 defined in Section 13401 of the Corporations Code, if that
10 corporation and its shareholders, officers, directors, and employees
11 rendering professional services who are licensed professional
12 fiduciaries are in compliance with the Moscone-Knox Professional
13 Corporation Act, the provisions of this article, and all other statutes
14 and regulations pertaining to the corporation and the conduct of
15 its affairs. With respect to a licensed professional fiduciary
16 corporation, the governmental agency referred to in the
17 Moscone-Knox Professional Corporation Act (Part 4 (commencing
18 with Section 13400) of Division 3 of Title 1 of the Corporations
19 Code) is the Professional Fiduciaries Bureau.

20 6601. It is unprofessional conduct and a violation of this chapter
21 for any person licensed pursuant to this chapter to violate, attempt
22 to violate, directly or indirectly, or assist in or abet the violation
23 of, or conspire to violate any provision or term of this article, the
24 Moscone-Knox Professional Corporation Act, or any regulations
25 duly adopted under those provisions.

26 6602. A licensed professional fiduciary corporation shall not
27 commit or omit any act that, if committed or omitted, would
28 constitute unprofessional conduct under any statute or regulation.
29 A licensed professional fiduciary corporation, in the conduct of
30 its practice, shall observe and be bound by these statutes and
31 regulations to the same extent as a person holding a license under
32 this chapter.

33 6603. The name of a licensed professional fiduciary corporation
34 and any name or names under which it may render professional
35 services shall contain the words “~~professional fiduciary~~” “*licensed*

1 *professional fiduciary*” and wording or abbreviations denoting
2 corporate existence.

3 6604. Except as provided in Section 13403 of the Corporations
4 Code, each director, shareholder, and officer of a licensed
5 professional fiduciary corporation shall be a licensed professional
6 fiduciary.

7 6605. The income of a licensed professional fiduciary
8 corporation attributable to professional services rendered while a
9 shareholder is a disqualified person, as defined in Section 13401
10 of the Corporations Code, shall not in any manner accrue to the
11 benefit of the shareholder or his or her shares in the licensed
12 professional fiduciary corporation.

13 ~~6606. The bureau may adopt and enforce regulations to carry~~
14 ~~out the purposes and objectives of this article, including the~~
15 ~~following:~~

16 (a) ~~A regulation that requires the~~

17 6606. (a) *The* bylaws of a licensed professional fiduciary
18 corporation ~~to~~ shall include a provision that requires the capital
19 stock of the corporation owned by a disqualified person, as defined
20 in Section 13401 of the Corporations Code, or a deceased person,
21 to be sold to the corporation or to the remaining shareholders of
22 the corporation within the timeframe provided by the regulation
23 60 days.

24 (b) ~~A regulation that requires a licensed professional fiduciary~~
25 ~~corporation to provide shall maintain adequate security by~~
26 ~~insurance or otherwise at a minimum amount of one million dollars~~
27 ~~(\$1,000,000) for claims against the corporation by its customers~~
28 ~~arising out of the rendering of professional services.~~

29 6607. (a) *A licensed professional fiduciary corporation that*
30 *is appointed as a guardian, conservator, personal representative,*
31 *or trustee by a court shall be liable for any licensed professional*
32 *fiduciary who violates the powers and duties of those appointments*
33 *while acting on behalf of the corporation.*

34 (b) *Nothing in subdivision (a) shall be interpreted to prevent*
35 *the bureau from individual enforcement and disciplinary action*
36 *against a licensed professional fiduciary who has violated any of*
37 *the provisions of this chapter.*

38 SEC. 2. *Section 13401 of the Corporations Code is amended*
39 *to read:*

40 13401. As used in this part:

1 (a) “Professional services” means any type of professional
2 services that may be lawfully rendered only pursuant to a license,
3 certification, or registration authorized by the Business and
4 Professions Code, the Chiropractic Act, or the Osteopathic Act.

5 (b) “Professional corporation” means a corporation organized
6 under the General Corporation Law or pursuant to subdivision (b)
7 of Section 13406 that is engaged in rendering professional services
8 in a single profession, except as otherwise authorized in Section
9 13401.5, pursuant to a certificate of registration issued by the
10 governmental agency regulating the profession as herein provided
11 and that in its practice or business designates itself as a professional
12 or other corporation as may be required by statute. However, any
13 professional corporation or foreign professional corporation
14 rendering professional services by persons duly licensed by the
15 Medical Board of California or any examining committee under
16 the jurisdiction of the board, the Osteopathic Medical Board of
17 California, the Dental Board of California, the California State
18 Board of Pharmacy, the Veterinary Medical Board, the California
19 Architects Board, the Court Reporters Board of California, the
20 Board of Behavioral Sciences, the Speech-Language Pathology
21 and Audiology Board, the Board of Registered Nursing, *the*
22 *Professional Fiduciaries Bureau*, or the State Board of Optometry
23 shall not be required to obtain a certificate of registration in order
24 to render those professional services.

25 (c) “Foreign professional corporation” means a corporation
26 organized under the laws of a state of the United States other than
27 this state that is engaged in a profession of a type for which there
28 is authorization in the Business and Professions Code for the
29 performance of professional services by a foreign professional
30 corporation.

31 (d) “Licensed person” means any natural person who is duly
32 licensed under the provisions of the Business and Professions
33 Code, the Chiropractic Act, or the Osteopathic Act to render the
34 same professional services as are or will be rendered by the
35 professional corporation or foreign professional corporation of
36 which he or she is or intends to become, an officer, director,
37 shareholder, or employee.

38 (e) “Disqualified person” means a licensed person who for any
39 reason becomes legally disqualified (temporarily or permanently)
40 to render the professional services that the particular professional

1 corporation or foreign professional corporation of which he or she
2 is an officer, director, shareholder, or employee is or was rendering.

3 ~~SEC. 2.~~

4 *SEC. 3.* Section 2104.5 is added to the Probate Code, to read:

5 2104.5. If a *licensed* professional fiduciary corporation is
6 appointed as a guardian or conservator, each shareholder, officer,
7 director, or employee of the corporation who is a *licensed*
8 professional fiduciary may individually exercise the powers and
9 duties of the guardian or conservator.

10 ~~SEC. 3.~~

11 *SEC. 4.* Section 8406 is added to the Probate Code, to read:

12 8406. If a *licensed* professional fiduciary corporation is
13 appointed as a personal representative, each shareholder, officer,
14 director, or employee of the corporation who is a *licensed*
15 professional fiduciary may individually exercise the powers and
16 duties of the personal representative.

17 ~~SEC. 4.~~

18 *SEC. 5.* Section 15605 is added to the Probate Code, to read:

19 15605. If a *licensed* professional fiduciary corporation is
20 appointed as a trustee, each shareholder, officer, director, or
21 employee of the corporation who is a *licensed* professional
22 fiduciary may individually exercise the powers and duties of the
23 trustee.